

SECTION 4 - PUPIL RESIDENCY

"District of Residence" is defined as the district in which a pupil's custodial parent or parents or legal guardian resides. However, there are many exceptions for which the pupil may be counted as a "resident" of the educating district although the pupil or the pupil's parent(s) may not reside within the school district boundaries. Those instances are reviewed in "A. Resident Pupils" below.

A nonresident pupil is a pupil whose parent(s) or legal guardian does not reside within the educating district's school boundaries and the pupil is less than 18 years of age. Such a pupil may be counted for membership purposes if the pupil has obtained the approval of the resident district; or, if the nonresident pupil meets one of the many exceptions for which the approval of the resident district is not a requirement. These exceptions are reviewed in "B. Nonresident Pupils."

A. Resident Pupils

It is the district's responsibility to determine if a pupil is a resident of the district or meets specific criteria that would allow a nonresident pupil to be counted as a resident of the district for pupil membership purposes. A local or intermediate school district may count a pupil as a **"resident pupil"** if the district has evidence that the pupil meets one of the following criteria:

- The pupil's parent(s) or legal guardian resides in a dwelling in the district. If the pupil's parents, or the pupil's parent(s) and legal guardian, reside in different districts, either district may enroll the pupil as a resident, regardless of which parent has custody.
- The pupil lives with a relative other than a parent in a dwelling within the district for the purposes of securing a suitable home and not solely for educational purposes. For pupil accounting purposes, a relative is defined as a parent, grandparent, brother, sister, stepparent, step-grandparent, stepsister, stepbrother, uncle, aunt, first cousin, great aunt, or great uncle *by marriage, blood or adoption*. Any relative outside of this definition would be quite unusual; therefore, districts are urged to request some evidence that the familial relationship, rather than some other reason, is the actual basis for the placement of the child in the home. (See "Note" regarding children of military family.)
- The pupil is 18 years of age or an emancipated minor and resides in the district.
- The pupil resides in a licensed home in which he/she was placed by court order or by a child placing agency. The child is considered to be a resident of the district where the home in which the child is living is located for pupil accounting purposes.
- The pupil has been issued an F-1 Visa and resides in the district.
- The pupil is a foreign exchange student living with a host family whose members are residents of the district.
- The pupil is a homeless child per the McKinney-Vento Homeless Assistance Act, 42 USC 11431.
- A pupil who has been incarcerated in a county jail becomes a resident of the district where the county jail is located. The district where the county jail is

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located **may** enroll such a pupil and provide an education to that student. The FTE must be pro-rated.

- A child from a military family who has been placed in the home of the non-custodial parent or a person serving as loco parentis under special power of attorney executed under applicable law while the custodial parent has been assigned to active duty (2008 PA 160) shall be enrolled in the district where the non-custodial parent or loco parentis resides; or, the pupil may continue to attend the district where the pupil was enrolled when residing with the custodial parent prior to the active duty assignment. The child(ren) may be enrolled one month prior to the beginning of the parent's tour of active duty and continue to be enrolled up to six months following the completion of the parent's tour of active duty. (Active duty means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211.) The child(ren) of a veteran who has been severely injured, medically discharged, or died as the result of injuries sustained while on active duty, may continue to be enrolled for a period of one year following the discharge or death of the veteran. Tuition is prohibited.

NOTE: A Power of Attorney is a temporary delegation of parental powers and does not create a guardianship (1980 AG Opinion 5782). A power of attorney does not, by itself, establish residency unless the power of attorney places the child with a relative for the purpose of securing a suitable home and not for educational purposes. A child placed with a person other than a relative of the child under a power of attorney does not become a resident of the district, MCL 380.1148.

B. Nonresident Pupils

A nonresident pupil is a pupil that resides outside of the school district boundaries and does not meet any of the criteria under "Resident Pupil." The educating district must have approval from the pupil's district of residence to count that pupil for membership purposes, **except** the resident district's approval is not required for pupils enrolled in a Public School Academy, the Michigan Virtual High School, University School, or a pupil enrolled under schools of choice programs, a cooperative agreement, or any of the other exceptions under Section 6(6) of the State School Aid Act. Approval from the resident district is not required for the following situations.

1. District of Residence Approval Not Required

a. Pupil Enrolled in a Public School Academy or University School

A pupil enrolled in a public school academy shall be counted in membership in the public school academy. A pupil enrolled in a university school shall be counted in membership in the university school. Approval by the pupil's district of residence shall not be required for those pupils enrolled in a public

school academy or a university school. These pupils are treated as "residents" of the educating district and shall not be charged tuition.

NOTE: If the public school academy has enrolled a special education pupil who resides in a district in an intermediate district other than the intermediate district where the public school academy is located, then the pupil's resident district or resident intermediate district must provide special education pupil special education services at the public school academy or have a cooperative agreement with the intermediate district where the public school academy is located to provide those special education services.

b. Pupils Enrolled in the Michigan Virtual High School

Pupils enrolled in courses through the Michigan Virtual High School are enrolled under a cooperative agreement between the Michigan Virtual High School and the educating district. Pupils who are enrolled in these classes, are counted by the educating district. The educating district is responsible for any fees and supplies.

c. Section 105 and 105c Schools of Choice Pupils

Pupils enrolled under Section 105 of the State School Aid Act must be a resident of a district within the intermediate school district's boundaries. Pupils enrolled under Section 105c of the State School Aid Act must be a resident of a district within an intermediate school district contiguous to the boundaries of the educating district's intermediate school district. In no case may districts charge tuition for pupils who are enrolled in the district pursuant to Section 105 or 105c. A local school district that elects to operate a Section 105 or a Section 105c **Schools of Choice program** may count a nonresident pupil in membership if the district has evidence that the pupil meets one of the following criteria:

- ✓ The pupil is a nonresident, but is a resident of another district within the same ISD. The local district may only count this pupil in membership if all Schools of Choice 105 requirements have been met.
- ✓ The pupil is a nonresident, but is a resident of another district within an ISD that is contiguous to the educating district's ISD. The local district may only count this pupil in membership if all Schools of Choice 105c requirements have been met.
- ✓ The pupil who was enrolled in and attended the district under Section 105 or 105c in the school year or semester immediately preceding the school year or semester in question shall be allowed to continue to enroll in the district until the pupil graduates from high school. A district shall give preference for enrollment over all other nonresident applicants residing within the same intermediate school district (Section 105) or contiguous intermediate school district (Section 105c) to other school-age children who reside in the same household.

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- ✓ The pupil was enrolled in and attended school in the district as a nonresident pupil in the 1995-96 school year and continues to be enrolled each school year in that district. The district shall allow this nonresident pupil to continue to enroll in and attend school in the district until high school graduation without requiring the pupil to apply for enrollment in the Schools of Choice program.

A district that enrolls pupils under Section 105 or Section 105c and does not comply with Section 105 or Section 105c requirements will forfeit 5% of the district's total state school aid allocation.

NOTE: A local school district that enrolls a **special education pupil under a schools of choice program** will become that pupil's resident district for purposes of developing and implementing an individualized education plan (IEP), and will become responsible for the education of the pupil and for providing (or arranging for the provision of) services for the pupil. Section 105c (contiguous) contains an additional requirement that the choice district must enter into a written cooperative agreement with the special education pupil's resident district as to the payment of added costs associated with the pupil's programs and services. The district shall refuse to enroll a special education pupil under section 105c if the districts cannot reach an agreement on special education costs.

NOTE: If a district has counted a pupil in membership on either the membership count day or the supplemental count day, the district shall not refuse to enroll or refuse to continue to enroll that pupil based upon the pupil's suspension or expulsion from another district within the past two years (Sections 105(10) and 105c(10) of the State School Aid Act). This does not prohibit the district from expelling the pupil for disciplinary reasons.

d. ISD Schools of Choice

A pupil enrolled in a district other than the pupil's district of residence under Section 91(a) or under an ISD Schools of Choice pilot program under former Section 91 shall be counted by the educating district. (At least 50% of the ISD constituent districts must continue to participate in the Schools of Choice pilot program under former Section 91.) Such a district is exempt from Sections 105 and 105c. (For additional information see Non-Conventional Pupils - Schools of Choice.)

e. Cooperative Education Programs

Pupils educated as part of a cooperative education program such as special education center programs or non-center programs, career and technical education programs, or pupils enrolled in a grade not offered by the district of residence (example: pupils in grades 9-12 who are residents of a K-8 school district) shall be counted in membership by the educating district unless

specified otherwise in the cooperative agreement. The resident district is responsible for any agreed-upon amount of tuition or other payment for pupils educated outside of the boundaries of the pupil's district of residence under a cooperative agreement. The responsibility for reporting the pupil's attendance is explained in more detail in the Non-Conventional Pupil - Cooperative Education Programs section of this manual.

f. Alternative Education Program Pupils

A pupil enrolled in an alternative education program, who has been suspended or expelled from his or her resident district for any reason including but not limited to Section 1310, 1311 or 1311a of the Revised School Code, may be counted in membership. A pupil who has previously dropped out of school, is pregnant or is a parent, or a pupil who has been referred to the program by the court may enroll in the alternative education program without the resident district's approval. See Non-Conventional Pupils - Alternative Education Program to determine which district counts the pupil.

g. Pupil Moved Out of the District

A pupil whose district of residence changed after the pupil membership count date and before the supplemental count day and who continues to be enrolled on the supplemental count day as a nonresident in the district in which he or she was enrolled as a resident on the pupil membership count day of the same school year may be counted in membership by the educating district. This pupil MUST be reported as a nonresident.

h. Nonpublic Part Time Pupils

Approval by the pupil's district of residence is not required for a nonpublic part-time pupil (shared time) in grades 1 to 12 enrolled in nonessential elective courses in accordance with Section 166b of the State School Aid Act. Shared time pupils are enrolled under a cooperative agreement between the educating district and the nonpublic school. Shared time pupils are counted by the educating district for that portion of time that this pupil is enrolled in nonessential courses. (See Non-Conventional Pupils - Nonpublic Part Time.)

i. Part-Time Pupil

An inter-district split schedule pupil is a pupil who attends the resident district for part of the day and a second district for part of the day but not as part of a cooperative agreement. The sum of the FTE at both districts may not exceed 1.0 full FTE. The approval from the resident district is not required if such a pupil is receiving half or less of his or her pupil instruction at the nonresident district. The enrolling districts count the pupil on a pro-rata basis. (See Non-Conventional Pupils - Split Schedule.)

j. Criminal Sexual Assault or Serious Assault

A pupil who has made an official written complaint to law enforcement officials and to school officials of the pupil's district of residence that he or she has been the victim of a criminal sexual assault or other serious assault that happened on school grounds or at a school function or was committed by one or more other pupils enrolled in the district or by an employee of the district, that pupil does not need the resident district's approval to enroll in another district. The educating district may count the pupil.

k. Pupils Educated by the Intermediate School District

Special Education pupils educated by the intermediate school district shall be counted by the ISD. General education pupils placed in an on-grounds child caring institute or a juvenile detention facility and being educated by the intermediate school district shall be counted by the ISD. All other general education pupils are counted by the resident district.

l. Pupils Educated at the Michigan School for the Deaf and Blind

Pupils enrolled in the Michigan Schools for the Deaf & Blind shall be counted by the ISD of residence.

m. Special Education Center Program

Pupils educated in a special education center program shall be counted by the district or intermediate district operating the center program. Special Education pupils are not considered tuition pupils.

n. Children of Employees

A district may enroll and count in membership without a release the children of district employees who reside with the employee in another Michigan school district. Tuition may not be charged. These pupils are to be reported as nonresident pupils. (Note: The district is not required to enroll employee's children but the district should have a board policy adopted to ensure equitable treatment of this group of nonresident pupils.)

o. Pupils Expelled From Other Districts

An expelled pupil who has been denied reinstatement by the expelling district may be reinstated by the enrolling district's school board according to Section 1311 or 1311a of the Revised School Code, MCL 380.1311 and 380.1311a.

p. Pupils Enrolled in Middle College Program

A pupil enrolled in a middle college program focused on health sciences in a district other than the pupil's district of residence where the enrolling district and the resident district are constituent districts of the same intermediate district. However, if the pupil's resident district is a first class district and the middle college program is held within the boundaries of that first class

district, the enrolling district must have a release from the pupil's district of residence.

q. Pupils in Olympic Training

A pupil who is enrolled in a district other than his/her district of residence and attends an Olympic Training Education Center. (The pupil's district of residence must be a Michigan school district.)

2. District of Residence Approval is Required

A district that enrolls a nonresident pupil that does not meet any of the exceptions above must have the approval of the resident district to count that pupil for membership purposes. Examples of pupils for whom the resident district's approval are required in order to count for pupil membership purposes are as follows:

a. Non-K12 Pupil

A Non-K12 pupil is a pupil whose **resident district** does not offer all grade levels K through 12. The educating district may have enrolled such a pupil in a grade level not offered by the Non-K12 district or enrolled such a pupil in a special education program under a cooperative agreement with the resident district. A school district that enrolls a pupil in a grade level not offered by the district of residence and not as part of a cooperative program must have the approval of the district of residence in order to count the pupil. A district that enrolls a pupil in a grade level that is offered by the Non-K12 district must have a release from the resident district and is reported as an "All Other" nonresident pupil in the Residency Related Information data (field 30 of the SRSD).

b. Parent Request

A district that enrolls a nonresident pupil at the parent's request that does not meet any of the exceptions under B-1 above must have the approval of the district of residence to count the pupil for membership purposes.

C. Regulatory References

State Aid Act Sections:

388.1603(7) 388.1606(4)
388.1606(6) 388.1606(15)
388.1624b 388.1705
388.1705C 388.1711
388.1718

Revised School Code Sections:

380.1148 380.1148a
380.1401 380.1411
380.1406 380.1415
380.1407 380.1416

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Administrative Rules:

340.3

340.5

Public Act

2008 PA 160

Attorney General Opinions:

5004, May 1976

5112, Dec. 1976

5574, Sept. 1979

5782, Sept. 1980

5925, June 1981

5995, Oct. 1981

6316, Sept. 1985

Court Cases:

University Center, Inc. v. Ann Arbor Public Schools. 386 Mich 210 (1971)

Pupil Moves Out of District After Count Day:

Q #1: The district currently does not accept nonresident pupils under schools of choice. However, the board will consider tuition enrollment for pupils who reside in the school district but move out prior to the end of the school year. When can tuition be charged for a resident pupil who moves out prior to the February supplemental count? What if the pupil moved out of the district following the supplemental count?

A #1: Section 6(6)(g), of the State School Aid Act, allows a pupil who had been a resident of the school district on the fall count day and moves out of the district prior to the supplemental count day but continues to attend the district in the current school fiscal year to be counted for membership purposes on the supplemental count day without a release from the new resident district. Section 6(15), of the State School Aid Act, forbids tuition being charged for such a pupil. A pupil moving after the supplemental count day would not have an impact on FTE count. Since the district is receiving full funding for such a pupil, the district would not be entitled to tuition. The pupil would be required to have a release from the new resident district for the next school fiscal year. Tuition may be optional at that time.

Q #2: The pupil was a resident of the district on the fall count day. The family moved out of the district in November. The family pulled the child out to home school her. Now the pupil wants to return. Does section 6(6)(g) still apply?

A #2: Section 6(6)(g), of the State School Aid Act, permits a pupil who has moved out of the district after the count date to continue attending and be counted for membership purposes on the supplemental count date without a release from the new resident district. There was a break in service when the parents pulled her out to home school her. So, this pupil needs a release from the new resident district in order to be counted for membership on the supplemental count day.

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Q #3: A family is enrolled in the district under schools of choice. The family received a foster child the first week of school. The schools of choice window had closed. Is there a way the district can enroll this foster child without a release form from the resident district?

A #3: The application window is closed; however, if the district had unlimited slots in the grade level that this child would be enrolled in and if all other applicants have been enrolled (or at least given the opportunity to enroll), then the district could appeal to the Department for a waiver to enroll this pupil under schools of choice by the end of the first week of school. However, if the schools of choice had limited slots and there are other pupils on a waiting list to be enrolled in the district under schools of choice, then this child may be added to that waiting list. The student could be placed at the top of the list for the next opening as other members in the household have already been enrolled under schools of choice. A release form from the resident district would work.

Q #4: A pupil's parents reside separately in two neighboring districts. The pupil has enrolled in a third district under schools of choice and will generate the lesser of the foundation allowance of the educating district and the resident district. Does section 24b, of the State School Aid Act, have any implication on this?

A #4: Section 24b strictly grants the child the right to enroll in either district in which the child's parents reside. Instead, the child has enrolled in a third district under schools of choice. Thus, Section 24b does not apply in this case and the child's resident district is the district where the custodial parent resides, or where the child is actually living. If the child is residing in both districts on an equal basis, either district would be considered the resident district for purposes of determining the foundation amount that will be generated.

Q #5: Can a district advertise and enroll pupils under Section 105 or Section 105C for the third trimester?

A #5: No. Current law only allows for the application window for fall enrollment and second semester or second trimester enrollment. Third trimester allocation/enrollment is not allowed for Section 105 or Section 105c.

Release From Resident District Is Necessary:

Q #6: Does an early childhood developmentally delayed pupil need a release from the resident district to enroll?

A #6: If the preschool pupil is attending a district other than the district of residence and not as part of a center type program configuration, then that pupil must have a release from the resident district as this pupil generates membership money. If the

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preschool pupil is attending the district due to an IEP decision, the IEP would serve as the release.

Q #7: Can a district enroll pupils as "tuition" pupils and charge them tuition for educating them? Would the district need a release from the resident district?

A #7: Tuition pupil simply means a nonresident pupil for whom tuition may be charged. Whether or not tuition may be charged depends upon several factors. Special education pupils cannot be charged tuition but would require a release form from the resident district unless they are enrolled under a cooperative agreement with the resident district. Pupils enrolled under circumstances that are listed in section 6(6), of the State School Aid Act, do not require a release form from the resident district; and, those pupils who are enrolled under section 6(6)(d-j) cannot be charged tuition.

However, a general education pupil enrolled under parent request who does not meet any of the exceptions in section 6(6), of the State School Aid Act, and does not meet any of the exceptions that allows a nonresident pupil to be counted as a resident of the district, must obtain a release from the resident district in order to be counted in membership and may be charged tuition. Also, a pupil who cannot obtain a release from the resident district may be enrolled and charged tuition; such a pupil cannot be counted in membership.

Enrolling Employees' Children:

Q #8: The district's school board has always allowed the children of teachers to attend with the permission of the resident district. Can the district ignore section 6(6)(j), of the State School Aid Act, and charge tuition?

A #8: The district's school board needs a policy regarding the enrollment of employees' children. However, section 6(6)(j), of the State School Aid Act, permits these pupils to be enrolled and counted for membership purposes without a release from the resident district. Section 6(15), of the State School Aid Act, removes the rights of the enrolling district to charge tuition for these pupils.

Q #9: Our district does not have room to accept the children of employees. Does section 6(6)(j), of the State School Aid Act, require that our district enroll the children of any employee that requests this?

A #9: No, section 6(6)(j) is permissive. Your district's school board should have a policy so that equitable and fair treatment is used if and when your district does enroll children of employees.

Q #10: If children of employees have been enrolled under schools of choice in the past, should those same pupils now be reported as nonresidents "all other"?

A #10: The district could choose to report these pupils as nonresidents "all other". Do keep in mind that if the parent ceases to be an employee of the district, section 6(6)(j), of the State School Aid Act, would no longer apply. The district's school board needs to have a written policy to determine when the pupil's enrollment ceases after the employees' departure. Also, the pupil would then have to reapply for "schools of choice" in order to continue to be enrolled.

Q #11: Some of the district's school employees reside across the state line in another state. May the district enroll and count for membership purposes a child of such an employee?

A #11: No. Section 6(6)(j), of the State School Aid Act, simply allows the district to enroll a child of an employee without the release from the resident district. The resident district would have to be a district in the State of Michigan. The State of Michigan has no obligation to educate resident pupils of another state. Also, the foundation allowance for nonresident pupils is the foundation allowance of the resident district. Since this pupil is from a district outside of the State of Michigan, there would be no foundation allowance.

Child Has Dual Residency:

Q #12: May the district enroll a pupil as a resident of the district because her ex-stepfather resides in the district?

A #12: The familial relationships that allows a child to reside within the district with a relative for the purpose of a suitable home and be enrolled as a resident pupil are parent(s), grandparent(s), sibling(s), aunt(s), uncle(s), first cousin(s) by birth, adoption, or marriage. In this instance that familial relationship to the stepparent has been broken through the divorce process. The relationship by birth or adoption remains in tact regardless of a divorce but the relationship by marriage ends with a divorce.

Q #13: The pupil's parents are divorced and the child resides with the mother across the Michigan-Indiana border. (Could be the Michigan-Ohio or the Michigan-Wisconsin borders) The father resides in our school district. May we enroll the child as a resident pupil?

A #13: Yes, under section 24b, of the State School Aid Act, and section 380.1148a, of the Revised School Code, the child is a resident of the district where either parent (or legal guardian) resides regardless of which parent is the custodial parent. In this case, the father resides in your school district giving the child residency status in your district.

Child Resides with Relative:

Q #14: An elementary pupil resides with his grandmother in District A while the parents of the child reside in District B approximately 100 miles away. The grandmother has been granted a Power of Attorney to keep this child. District A reported this pupil as a Non-K12 pupil. District B is a K12 district. Should the district report this pupil as "schools of choice" instead?

A #14: Neither of those selections is appropriate. A Non-K12 pupil is a pupil whose resident district does not offer high school. That is not the case in this situation. Schools of choice is one means under which the pupil may enroll; however, there are requirements of the enrolling district that must be met in order to enroll pupils under "schools of choice". In this particular situation, the child resides with the grandmother (a relative) for the purpose of a suitable home. Thus, the child becomes a resident of District A. If the power of attorney was for educational reasons, the child would need a release from the resident district and be reported as a resident of District B under "All Other".

Child Resides with Friends:

Q #15: A single parent is being deployed to Iraq. This parent has signed a Delegation of Parental Authority appointing her best friend as loco parentis to her son for six months. The parent and child are from a neighboring state. Does the district report this child as a resident pupil?

A #15: ~~Attorney General Opinion #5574 states in part that a child placed in a relative's home pursuant to a power of attorney authorized by the Revised Probate Code "for the purpose of a suitable home" (which we could assume since the mother is being deployed to Iraq) and not for an educational purpose is a resident of the school district in which the relative resides. This parent signed the Power of Attorney to a friend, not a relative. The child does not become a resident of the district of this friend; thus, this child is not entitled to a free and public education in this state—meaning, the child cannot be counted for membership purposes. (The friend may want to consider Limited Guardianship or the district may want to review the "Homeless Act".) Public Act 160 of 2008 permits a pupil from a military family whose custodial parent has been assigned to active duty and has placed that child with the non-custodial parent or a person serving in loco parentis, through a special power of attorney executed under applicable law, to attend the district where that non-custodial parent or the person serving as loco parentis resides. The pupil may also continue to attend the district where the pupil had been enrolled and attending while residing with the custodial parent prior to the parent being assigned to active duty. Tuition cannot be charged.~~

Student's Legal Residence is in Another State:

Q #16: Five students ranging in ages 14–18 are living on campus at the university and are training for winter sports for the Olympics. The parents of these students reside in three different states. Does the district claim these students as residents of the district where the university is located and use the dorms on campus as the resident address? May the district count these pupils if the parents grants the coach limited guardianship?

A #16: Under Attorney General Opinion #5004, these pupils are not residents of the district where the university is located because the coach is not a relative and the power of attorney was for educational purposes. If these students are less than 18 years of age, the district cannot count them for membership purposes. We do not finance the education of students who are residents of other states. If one of the parents resides within the district with his/her child or if the child is 18 years of age by count day, the district could count that student for membership purposes.

Senior in high school

Q #17: Pupil has attended District A for several years up through his junior year. The family moved out of the district during the summer. The pupil would like to attend District A and graduate with his class. What documentation is required so this pupil may continue his senior year at District A?

A #17: If District A is not schools of choice, the pupil will have to obtain a release from the new resident district. Another option would be for the parents to pay the full tuition amount and the pupil not be counted for membership purposes.